

**TESTIMONY OF CHARLES J. WILLOUGHBY, INSPECTOR GENERAL
BEFORE THE COMMITTEE ON WORKFORCE DEVELOPMENT AND
GOVERNMENT OPERATIONS**

**PUBLIC OVERSIGHT HEARING ON
WHISTLEBLOWER PROTECTIONS FOR DISTRICT EMPLOYEES**

OCTOBER 8, 2008

GOOD MORNING CHAIRPERSON SCHWARTZ AND MEMBERS OF THE COMMITTEE. I APPRECIATE THE OPPORTUNITY TO DISCUSS THE ROLE OF THE OFFICE OF THE INSPECTOR GENERAL IN MATTERS RELATING TO WHISTLEBLOWER PROTECTIONS.

BACKGROUND

AS I UNDERSTAND THE DISTRICT'S WHISTLEBLOWER REINFORCEMENT ACT OF 1998 (D.C. LAW 12-160)(WHISTLEBLOWER ACT), IT WAS ENACTED TO ENHANCE THE PROTECTIONS FOR EMPLOYEES AND CONTRACTORS OF THE DISTRICT GOVERNMENT WHO REPORT WASTE, FRAUD, ABUSE OF AUTHORITY, VIOLATIONS OF LAW, OR THREATS TO PUBLIC HEALTH OR SAFETY. THE ACT PROVIDES REMEDIES FOR ENFORCEMENT BY A COURT OR ADMINISTRATIVE BODY FOR THE AGGRIEVED INDIVIDUAL WHEN: (1) IT HAS BEEN DEMONSTRATED BY A PREPONDERANCE OF THE EVIDENCE THAT A REPORT OF WASTE OR ABUSE BY AN EMPLOYEE WAS A CONTRIBUTING FACTOR IN A PERSONNEL ACTION AGAINST THE EMPLOYEE; AND (2) THE AGENCY IS UNABLE TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE PERSONNEL ACTION WOULD HAVE OCCURRED FOR LEGITIMATE, INDEPENDENT REASONS

NOTWITHSTANDING THE WHISTLEBLOWER'S COMPLAINT. D.C. CODE § 1-615.54 (2006).

BECAUSE THE ACT CREATES SPECIFIC REMEDIES TO PROTECT WHISTLEBLOWERS WHO MIGHT FACE REPRISAL FOR REPORTING WASTE AND MISCONDUCT – TO THE COUNCIL, OIG AND OTHER LAW ENFORCEMENT AUTHORITIES, AMONG OTHERS – IT FACILITATES THE FLOW OF ALLEGATIONS AND COMPLAINTS FROM EMPLOYEES AND CONTRACTORS WHO MIGHT NOT OTHERWISE COME FORWARD. IN FACT, ON OCCASION COMPLAINANTS TO THE OIG HAVE ADVISED US THAT, WITHOUT THESE PROTECTIONS, THEY MIGHT BE FEARFUL OF COMING TO US WITH THEIR INFORMATION.

OTHER WHISTLEBLOWER RELATED PROTECTIONS

IN ADDITION TO THE WHISTLEBLOWER ACT DESCRIBED ABOVE, THE STATUTE THAT SETS FORTH THE AUTHORITIES AND RESPONSIBILITIES OF THE OIG ALSO CONTAINS PROTECTIONS SPECIFICALLY FOR COMPLAINANTS OF THE OIG. D.C. CODE § 2-302.08(f-4)(2006) PROHIBITS REPRISALS BY ANYONE WITH THE ABILITY TO TAKE PERSONNEL ACTION AGAINST EMPLOYEES FOR MAKING A COMPLAINT OR DISCLOSING INFORMATION TO THE INSPECTOR GENERAL (UNLESS THE COMPLAINT WAS MADE WITH KNOWLEDGE THAT IT WAS FALSE).

FINALLY, THE DISTRICT'S STANDARDS OF CONDUCT PROHIBIT "COERCION, HARASSMENT, OR RETALIATORY ACTION" AGAINST AN EMPLOYEE, ACTING IN

GOOD FAITH, WHO REPORTS “DIRECTLY AND WITHOUT UNDUE DELAY TO HIS OR HER AGENCY HEAD AND TO THE OFFICE OF THE INSPECTOR GENERAL OF THE DISTRICT OF COLUMBIA ANY INFORMATION CONCERNING CONDUCT WHICH HE OR SHE KNOWS, OR SHOULD REASONABLY KNOW, INVOLVES CORRUPT OR OTHER CRIMINAL ACTIVITY, OR CONFLICT OF INTEREST. . . .” 6 DCMR §§ 1803.8 AND 1803.11.

THE ROLE OF THE OIG IN WHISTLEBLOWER MATTERS

IT IS IMPORTANT TO NOTE THAT THE OIG HAS NO STATUTORY AUTHORITY TO ADJUDICATE A CLAIM SEEKING TO INVOKE THE WHISTLEBLOWER PROTECTIONS PROVIDED IN THE WHISTLEBLOWER ACT (D.C. CODE TITLE 1, CHAPTER 6, SUBCHAPTER XV-A AND D.C. CODE TITLE 2, CHAPTER 2, SUBCHAPTER XII).

UNDER THIS LEGISLATION, IT IS MY UNDERSTANDING AN AGGRIEVED PARTY MAY OBTAIN A LEGAL DETERMINATION THAT HE OR SHE IS A WHISTLEBLOWER WHO HAS BEEN HARMED AS THE RESULT OF A PROHIBITED PERSONNEL PRACTICE IN TWO WAYS:

- BY SEEKING RELIEF AND DAMAGES THROUGH A CIVIL ACTION FILED IN D.C. SUPERIOR COURT, *SEE* D.C. CODE §§ 1-615.54(a) AND (b) AND D.C. CODE § 223.03 (a) AND (b)(2006); OR
- BY PURSUING AN ADMINISTRATIVE REMEDY THROUGH THE DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS OR ARBITRATION, *SEE ID* [SEC] 1-615.56 (2006) AND [SEC] 2-223.05 (2006).

THE OIG DOES HAVE JURISDICTION BASED ON THE IG STATUTE AND THE STANDARDS OF CONDUCT TO INVESTIGATE RETALIATION MATTERS THAT ARISE

AFTER AN INDIVIDUAL MAKES A COMPLAINT OR DISCLOSES INFORMATION TO THE INSPECTOR GENERAL. IN THE EVENT THAT OUR INVESTIGATION SUBSTANTIATES THAT RETALIATION OCCURRED, AN AGGRIEVED PARTY MUST STILL BRING A PRIVATE ACTION BEFORE THE SUPERIOR COURT OR AN ADMINISTRATIVE LAW JUDGE IN ORDER TO SEEK A REMEDY, SUCH AS REINSTATEMENT, RESTORATION OF LOST BENEFITS, BACK PAY, COMPENSATORY DAMAGES, AND/OR ATTORNEY FEES.

IN CASES WHERE A PERSON BRINGING AN ALLEGATION TO US BELIEVES THAT THERE IS EVIDENCE THAT HIS OR HER EMPLOYER IS PLANNING TO RETALIATE FOR CONTACT WITH THE OIG, WE HAVE COMMUNICATED DIRECTLY WITH AGENCY HEADS AND OTHERS TO ENSURE THAT THEY ARE AWARE OF THE RISKS INVOLVED IN RETALIATING AGAINST SOMEONE WHO THE COURTS MAY PROTECT AS A WHISTLEBLOWER.

FINALLY, THE OIG MAKES A PERMANENT RECORD OF EVERY INDIVIDUAL WHO BRINGS A COMPLAINT, ALLEGATION, OR OTHER RELEVANT INFORMATION TO OUR OFFICE OR TO OUR EMPLOYEES IN THE FIELD. WHILE THIS RECORD BY ITSELF DOES NOT CREATE WHISTLEBLOWER STATUS, THE OIG WILL BE ABLE TO CONFIRM THE DATE AND NATURE OF THE DISCLOSURE MADE TO THIS OFFICE, AND THE RESULTS OF AN INVESTIGATION CONDUCTED, IF ANY, IN ACCORDANCE WITH THE REQUISITE LEGAL OR ADMINISTRATIVE PROCEEDING OR ARBITRATION.

CONCLUSION

THANK YOU FOR ALLOWING ME TO SHARE MY COMMENTS CONCERNING THE ROLE OF MY OFFICE WITH RESPECT TO PROTECTIONS TO ENSURE THAT RIGHTS OF EMPLOYEES TO EXPOSE CORRUPTION, DISHONESTY, INCOMPETENCE, AND WASTE ARE PROTECTED FROM REPRISAL. I BELIEVE THAT HIGHLIGHTING THOSE PROTECTIONS, IS INSTRUMENTAL IN ALLAYING THE FEAR AND APPREHENSION THAT OFTEN ACCOMPANIES AN EMPLOYEE WHO FINDS IT NECESSARY TO MAKE ALLEGATIONS AGAINST HIS OR HER OWN EMPLOYER OR SUPERVISOR.

THAT CONCLUDES MY TESTIMONY, AND I WILL BE HAPPY TO ANSWER ANY QUESTIONS THAT YOU MAY HAVE.